

Attorney Docket No.: DC-0261US.NP  
Inventors: Foote and Yeo  
Serial No.: 10/553,585  
Filing Date: January 13, 2006  
Page 4

#### REMARKS

Claims 1-3 are pending in the instant application. Claims 1-3 have been rejected. Claims 1-3 have been canceled. New claim 4 has been added to incorporate the subject matter of claims 1-3 and to more clearly define the method of the present invention. No new matter has been added through new claim 4. Reconsideration is respectfully requested in light of the addition to the claims and the following remarks.

#### I. Rejection of Claims Under 35 U.S.C. 102

Claims 1-2 have been rejected under 35 U.S.C. 102(b) as being anticipated by Kikuta et al. (1996). The Examiner suggests that this reference discloses a method of determining the level of B-type natriuretic peptide (BNP) in a plasma sample from a patient diagnosed with unstable angina and comparing the level to a control as well as teaching that unstable angina correlates with myocardial ischemia. The Examiner further suggests that the clause starting with "wherein" in the claims does not limit the invention as it does not recite any additional active steps. Applicants respectfully traverse this rejection.

Attorney Docket No.: **DC-0261US.NP**  
Inventors: **Foote and Yeo**  
Serial No.: **10/553,585**  
Filing Date: **January 13, 2006**  
Page 5

At the outset, in an earnest effort to advance the prosecution and facilitate allowance of the claims, Applicants have canceled claims 1 and 2 making this rejection as it pertains to those claims moot. Applicants have added new claim 4 which incorporates subject matter from the canceled claims and more clearly defines the method of the present invention. Specifically new claim 4 recites a method for detecting cardiac ischemia in an individual that comprises measuring levels of a natriuretic peptide in blood samples from an individual both before and after the individual has completed an exercise stress test with myocardial perfusion imaging wherein a dual isotope, rest-stress protocol is used, and wherein an increase in the level of the natriuretic peptide is indicative of cardiac ischemia in the individual. Support for this new claim can be found throughout the specification as filed but in particular at pages 16-17 where the method of the claimed invention is taught. At page 16, lines 26-28, the type of exercise test is listed and then in the following paragraphs is described in detail. Also discussed at pages 16-17 is the fact that blood samples are taken both before and after testing. Nowhere does the reference of Kikuta et al. disclose a method that involves measuring

Attorney Docket No.: **DC-0261US.NP**  
Inventors: **Foote and Yeo**  
Serial No.: **10/553,585**  
Filing Date: **January 13, 2006**  
Page 6

levels of a natriuretic peptide before and after an exercise stress test as claimed. MPEP 2131 states that in order to anticipate an invention the cited reference must teach each and every limitation of the claims. As discussed *supra*, the cited reference fails to teach the use of an exercise stress test as claimed. Accordingly, the reference fails to teach or suggest the limitations of the claims as amended and withdrawal of this rejection is respectfully requested.

Claims 1-3 have been rejected under 35 U.S.C. 102(e) as being anticipated by Valkirs et al. (US Patent Application 2003/0109420). The Examiner suggests that this reference discloses a method of determining the level of B-type natriuretic peptide (BNP) in a plasma sample from a patient and that the sample may be obtained after induction of a stress test. The Examiner further suggests that the clause starting with "wherein" in the claims does not limit the invention as it does not recite any additional active steps. Applicants respectfully traverse this rejection.

As discussed *supra*, Applicants have canceled claims 1-3 making this rejection as it pertains to those claims moot. Applicants have added new claim 4 which incorporates subject

Attorney Docket No.: **DC-0261US.NP**  
Inventors: **Foote and Yeo**  
Serial No.: **10/553,585**  
Filing Date: **January 13, 2006**  
Page 7

matter from the canceled claims and more clearly defines the method of the present invention. Specifically new claim 4 recites a method for detecting cardiac ischemia in an individual that comprises measuring levels of a natriuretic peptide in blood samples from an individual both before and after the individual has completed an exercise stress test with myocardial perfusion imaging wherein a dual isotope, rest-stress protocol is used, and wherein an increase in the level of the natriuretic peptide is indicative of cardiac ischemia in the individual. Support for this new claim can be found throughout the specification as filed but in particular at pages 16-17 where the method of the claimed invention is taught. At page 16, lines 26-28, the type of exercise test is listed and then in the following paragraphs is described in detail. Also discussed at pages 16-17 is the fact that blood samples are taken both before and after testing. Nowhere does the reference of Valkirs et al. disclose a method that involves measuring levels of a natriuretic peptide using the specific type of exercise stress test specified in the claims as amended. MPEP 2131 states that in order to anticipate an invention the cited reference must teach each and every limitation of the claims. As discussed

Attorney Docket No.: **DC-0261US.NP**  
Inventors: **Foote and Yeo**  
Serial No.: **10/553,585**  
Filing Date: **January 13, 2006**  
Page 8

*supra*, the cited reference fails to teach the use of an exercise stress test as claimed. Accordingly, the reference fails to teach or suggest the limitations of the claims as amended and withdrawal of this rejection is respectfully requested.

Claims 1-3 have been rejected under 35 U.S.C. 102(e) as being anticipated by Zoghbi et al. (US Patent Application 2004/0243010). The Examiner suggests that this reference discloses a method of determining the level of B-type natriuretic peptide (BNP) in a plasma sample from a patient and that the sample may be obtained both before and after exercise and that the level of BNP increases after exercise. The Examiner further suggests that the clause starting with "wherein" in the claims does not limit the invention as it does not recite any additional active steps. Applicants respectfully traverse this rejection.

As discussed *supra*, Applicants have canceled claims 1-3 making this rejection as it pertains to those claims moot. Applicants have added new claim 4 which incorporates subject matter from the canceled claims and more clearly defines the method of the present invention. Specifically new claim 4 recites a method for detecting cardiac ischemia in an individual

Attorney Docket No.: **DC-0261US.NP**  
Inventors: **Foote and Yeo**  
Serial No.: **10/553,585**  
Filing Date: **January 13, 2006**  
Page 9

that comprises measuring levels of a natriuretic peptide in blood samples from an individual both before and after the individual has completed an exercise stress test with myocardial perfusion imaging wherein a dual isotope, rest-stress protocol is used, and wherein an increase in the level of the natriuretic peptide is indicative of cardiac ischemia in the individual. Support for this new claim can be found throughout the specification as filed but in particular at pages 16-17 where the method of the claimed invention is taught. At page 16, lines 26-28, the type of exercise test is listed and then in the following paragraphs is described in detail. Also discussed at pages 16-17 is the fact that blood samples are taken both before and after testing. Nowhere does the reference of Zoghbi et al. disclose a method that involves measuring levels of a natriuretic peptide using the specific type of exercise stress test specified in the claims as amended. MPEP 2131 states that in order to anticipate an invention the cited reference must teach each and every limitation of the claims. As discussed *supra*, the cited reference fails to teach the use of an exercise stress test as claimed. Accordingly, the reference fails to

Attorney Docket No.: **DC-0261US.NP**  
Inventors: **Foote and Yeo**  
Serial No.: **10/553,585**  
Filing Date: **January 13, 2006**  
Page 10

teach or suggest the limitations of the claims as amended and withdrawal of this rejection is respectfully requested.

## **II. Conclusion**

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



Jane Massey Licata  
Registration No. 32,257

Date: **April 28, 2008**

Licata & Tyrrell P.C.  
66 E. Main Street  
Marlton, NJ 08053

856-810-1515